

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NETCHOICE, LLC, d/b/a NETCHOICE, a
501(c)(6) District of Columbia organization;
and COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION d/b/a CCIA, a
501(c)(6) non-stock Virginia corporation,

Plaintiffs,

v.

KEN PAXTON, in his official capacity as
Attorney General of Texas,

Defendant.

Civ. Action No. 1:21-cv-00840

**DECLARATION OF TECHNOLOGY NETWORK IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Servando Esparza, declare as follows:

1. I am the Executive Director of Texas and the Southeast at Technology Network. As TechNet's executive director for Texas and the Southeast, I develop and manage TechNet operations in the Southeast region of the United States, coordinating with TechNet members, TechNet's vice president of state policy and government relations, and other TechNet staff. I work closely, in a bipartisan fashion, with state legislators and their senior staff, policymakers in the executive branch of state governments and at state regulatory bodies, and TechNet members to lobby and advocate on behalf of TechNet's agenda before state legislatures.

2. Technology Network is the national, bipartisan network of technology

CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than four million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet is a 501(C)(6) trade association based in Washington, DC. TechNet represents its members at the state and federal levels of government by advocating for or against legislation that affects its members.

3. TechNet's work is guided by our federal and state policy principles, which cover a broad set of policy issues. At the state level, these include privacy and security, energy, education and workforce development, financial technology, diversity and inclusion, new technologies and the future of work, automated vehicles, procurement, smart infrastructure, and taxation. TechNet's policy principles are decided by TechNet members on an annual basis and outlined on TechNet's website¹. TechNet represents 87 companies including Facebook, Google, Amazon, eBay, Apple, AT&T, DoorDash, Dell, HP, Lyft, Uber, Comcast, Salesforce, Verizon, Yahoo and many others. Social media platforms as defined in H.B. 20 would include several TechNet members including Facebook, Google, and

¹ See www.technet.org.

Amazon (“affected TechNet social media platform members”). Electronic mail (“Email”) service providers as defined in the Act would include several TechNet members including Google, Yahoo, Salesforce, Comcast, and Amazon (“affected TechNet email service provider members”)

4. Social media platforms understand that they have an obligation to remove objectionable content, otherwise their users will be subjected to dangers like images of child endangerment, financial scams, spam, and other harmful links. Companies take this responsibility seriously, removing harmful content while keeping their services open to a broad range of ideas. In the overwhelming number of cases, removal of offensive content is accomplished as intended. However, the sheer volume of content – hundreds of millions of posts per day – ensures that both artificial intelligence and human reviewers at companies cannot get it right 100 percent of the time. Billions of transactions, after all, will inevitably lead to errors. The Act will allow users to sue social media platforms merely for enforcing their content policies – standards that are laid out in detail on the platforms’ websites.

5. The Act perversely creates an incentive for affected TechNet social media platform members to not prohibit and remove any objectionable content on their social media platforms in order to avoid being accused of violating Tex. Civ. Prac. & Rem. Code § 143A.002(a)(1)-(3) and being sued by a user. Tex. Civ. Prac. & Rem. Code § 143A.002(a)(1)-(3) would prohibit affected TechNet social media

platform members from taking any moderation action against a user, a user's expression, or a user's ability to receive the expression of another person based on the viewpoint of the user or another person, the viewpoint represented in the user's expression or another person's expression or a user's geographic location in Texas except for a small number of limited occasions outlined in Tex. Civ. Prac. & Rem. Code § 143A.006. Content including threatening or intimidating messages, conspiracy theories, anti-vaccine misinformation, Holocaust denial, and white supremacy is not explicitly allowed to be removed by social media platforms. If affected TechNet social media platform members do remove that content, it could violate the Act. This would cause real-world, irreversible harm in Texas' communities and beyond.

6. Content moderation is at the core of the business models for social media platforms because it is critical for their business that the platforms are safe and family- and workplace-friendly. If affected TechNet social media platform members are unable to maintain a family- and workplace-friendly platform, it will affect their ability to attract advertisers that will not want to be associated with objectionable content. Additionally, users may decide to leave the platform if objectionable content that they report is not removed. Losing users and advertisers will have a negative financial impact on affected TechNet members.

7. The Act runs counter to the American free speech law governing

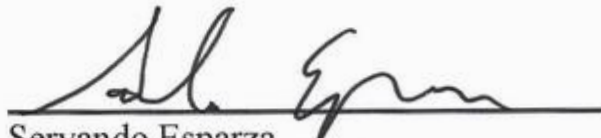
content liability on the internet, Section 230 of the federal Communications Decency Act (“Section 230”). Since its enactment in 1996, Section 230’s two key provisions have empowered online intermediaries to remove harmful content while providing them with the immunity that commonly exists in other real world offline contexts – for example, not holding a bookseller liable for libelous books, but rather the individual who committed the libel. Due to Section 230, American companies have the right to curate information on their service to meet the needs and expectations of their customers. Section 230 has supported innovation across the internet while also encouraging companies to be “Good Samaritans” by allowing them to “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”

8. It is estimated that over 320 billion spam emails are sent each day². With increasing threats by spammers and cybercriminals, email service providers take steps to protect email users from those threats. Tex. Business & Commerce Code § 321.054 will make it difficult for email service providers to block spam and other malicious threats, as the exceptions in statute do not cover all forms of threats. With billions of spam emails sent each day, it is important that email service

² See Forbes <https://www.forbes.com/sites/daveywinder/2020/05/03/this-surprisingly-simple-email-trick-will-stop-spam-with-one-click/?sh=676616f63791>

providers are able to block emails that may cause harm to email users and avoid the unintended consequences that could result in an influx of spam and risk emails in Texan's inboxes.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 29th day of September, 2021 in Austin, Texas.

A handwritten signature in black ink, appearing to read 'Servando Esparza', is written over a solid horizontal line.

Servando Esparza
Executive Director, Texas & Southeast
TechNet